

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

SEP 30 2013

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
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ANTONE LAMANDINGO KNOX,

Petitioner,

vs.

ANITA TRAMMEL, Warden,

Respondent.

No. CIV-13-925-W

ORDER

On September 11, 2013, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that the Court dismiss for lack of jurisdiction the Petition for a Writ of Habeas Corpus ("Petition") filed by petitioner Antone Lamandingo Knox pursuant to title 28, section 2254 of the United States Code. Knox was advised of his right to object, and the matter now comes before the Court on Knox's Ex Parte Objection to Magistrate Judge's Report and Recommendation [Doc. 9].

Upon de novo review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter. In the instant Petition, Knox has again challenged his state court convictions and sentences, and the United States Court of Appeals for the Tenth Circuit has held that "[w]hen a . . . successive [section] 2254 . . . claim is filed in the district court without . . . authorization from . . . [the appellate] court, the district court may transfer the matter to th[e] [appellate] court if it determines it is in the interest of justice to do so under [28 U.S.C.] §1631, or it may dismiss the . . . petition for lack of jurisdiction." In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008)(per curiam)(citations omitted). The Tenth Circuit has further held that "[w]here there is no risk that a meritorious

successive [section 2254] claim will be lost absent a . . . transfer, a district court does not abuse its discretion if it concludes that it is not in the interest of justice to transfer the matter to th[e] [appellate] court for authorization," *id.* (citation omitted), and instead dismisses the action.

Knox has not sought the required authorization, and because the Court finds in its discretion that it would not further the interest of justice to transfer this action to the Tenth Circuit because Knox's claims are time-barred, the Court

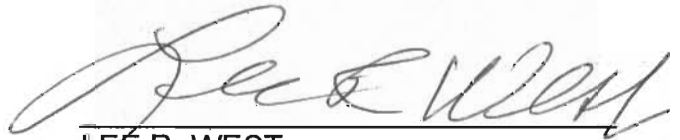
(1) ADOPTS the Report and Recommendation [Doc. 8] filed on September 11, 2013;

(2) DISMISSES the Petition without prejudice for lack of jurisdiction;

(3) DENIES Knox's Ex Parte Motion to Transfer Case to Tenth Circuit [Doc. 9] filed on September 23, 2013; and

(4) DECLINES Knox's request to further consider his indigency for purposes of appellate proceedings, if any, except to find, to the extent necessary, that Knox would be unable to advance a reasoned, nonfrivolous argument on the law or facts in support of the issues presented in the instant Petition.

ENTERED this 30th day of September, 2013.


LEE R. WEST
UNITED STATES DISTRICT JUDGE